

<div>CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795</div> <div>STAFF REPORT</div>		<div>Hearing Date/Agenda Number P.C. 6/11/03 Item 4.e.</div> <div>File Number CP03-013</div> <div>Application Type Conditional Use Permit</div> <div>Council District 7</div> <div>Planning Area South</div> <div>Assessor's Parcel Number(s) 494-06-039</div>
PROJECT DESCRIPTION		Completed by: Alison Hicks
Location: Northeast corner of Capitol Expressway and Seven Trees Boulevard		
Gross Acreage: 0.94	Net Acreage: 0.94	Net Density: n/a
Existing Zoning: CG Commercial General	Existing Use: grocery store	
Proposed Zoning: CG Commercial General	Proposed Use: Grocery store with sale of alcoholic beverages for off-site consumption	
GENERAL PLAN		Completed by: AH
Land Use/Transportation Diagram Designation Neighborhood/ Community Commercial		Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations
SURROUNDING LAND USES AND ZONING		Completed by: AH
North: Louis Solari Park	R-1-8 Residence	
East: Residential	R-2 Residence	
South: Commercial	C-G Commercial General	
West: Residential	R-M Residence	
ENVIRONMENTAL STATUS		Completed by: AH
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration circulated on <input type="checkbox"/> Negative Declaration adopted on		<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete
FILE HISTORY		Completed by: AH
Annexation Title: Monterey Park No. 30		Date: 9/18/58
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial <input type="checkbox"/> Uphold Director's Decision		Date: _____ Approved by: _____ <input checked="" type="checkbox"/> Action <input type="checkbox"/> Recommendation
OWNER	APPLICANT/DEVELOPER	
Gold Touch Investments, LLC 4546 El Camino Real, Suite C Los Altos, CA 94022	Salvador Lopez 1690 Kentfield Avenue, #11 Redwood City, CA 94061	

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: AH

Department of Public Works

None received.

Other Departments and Agencies

See attached memorandum from Police Department (Vice Unit), dated May 6, 2003.

See attached memorandum from the Fire Department, dated March 20, 2003.

OTHER ATTACHMENTS

Map of surrounding uses.

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Salvador Lopez, is requesting a Conditional Use Permit (CUP) to allow off-site sale of alcoholic beverages at an existing grocery store in a neighborhood shopping plaza located on the northeast corner of Capitol Expressway and Seven Trees Boulevard. The Zoning Ordinance requires a CUP for off-sale of alcoholic beverages in the CG Commercial General Zoning District. According to the Police Department, a Liquor License Exception Permit is not required at this site because there is not an undue concentration of On-Sale and Off-Sale Alcohol Beverage Control (ABC) Licenses in the subject census tract and crime does not exceed the 20% crime index in the subject police beat area. (See the attached Police Department memorandum.)

The proposed use is to be located in the Mercado Latino, an approximately 1,500-square-foot market within a small neighborhood shopping center approved in 1997 (File No. H97-068). Other tenant spaces in the shopping plaza include a laundry, beauty salon, check cashing facility, music store, dental office, cell phone store and bakery.

A public library and residential uses are located to the north of the site; a 7-Eleven convenience store, Mexican restaurant and other small retail uses are located in a small shopping center across Seven Trees Boulevard to the south; single-family residences and duplexes are east of the site; and multi-family uses are located across Capitol Expressway to the west (See attached map).

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from environmental review under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act in that the project consists of the operation of existing facilities involving negligible expansion of use beyond that existing.

GENERAL PLAN CONFORMANCE

The proposed commercial use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial.

ANALYSIS

The primary project issues for this project are conformance with the Zoning Ordinance and limitations on the operation of the proposed use.

The project proposes the sale to consumers of alcoholic beverages in original, unopened packages for consumption off the premises where sold. The Zoning Code requires a Conditional Use Permit for off-sale of alcohol in the CG Commercial General Zoning District. In accordance with Section 20.80.900 of the Code, the Planning Commission may issue the Conditional Use Permit for off-sale of alcoholic beverages only upon making the following findings:

1. For such a use at a location closer than 500 feet from any other such use either within or outside the City that the proposed location of the off-sale alcohol use would not contribute to an excess concentration of establishments which sell alcoholic beverages, or
2. For such a use at a location closer than 500 feet from any child care center, elementary school, secondary school, college or university, or one hundred fifty (150) feet from any residentially zoned property that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential and/or school use.

Findings Regarding Excess Concentration

One existing business that sells alcoholic beverages for off-site consumption is located closer than 500 feet to the Mercado Latino, a 7-Eleven convenience store immediately across the street from the subject site at Seven Trees Boulevard and Capitol Expressway. A restaurant in the same shopping center as the 7-Eleven serves alcoholic beverages with meals, but does not constitute “such a use” for purposes of the required findings because it does not include the sale of alcohol for off-site consumption.

In order to evaluate whether the requested sale of alcohol for off-site consumption constitutes an “excess concentration”, staff examined the information provided by the Police Department regarding the number of liquor licenses in the census tract within which the project site is located (census tract 5032.17) and two nearby census tracts (5032.04 and 5032.18) (see attached census tract map). The Police analysis compares the “recommended” number of licenses with the number of existing licenses in each census tract. The “recommended” number represents the city-wide per capita average applied to the population of the specific census tract and is the threshold for “over concentration” for purposes of determining the need for an Exception Permit.

The Police memorandum of March 21, 2003, indicates that recommended number of licenses for the project census tract (5032.17) is 4 off-sale license and 7 on-sale and that no ABC licenses have been previously issued for this census tract. The proposed off-sale license would be the first in this tract. The dividing line between the project census tract and the adjacent census tract to the south (tract 5032.18) is Seven Trees Boulevard, which runs along the southerly boundary of the project site. The existing 7-Eleven, located across the street from the project site, is located within this adjacent census tract, 5032.18. This tract has a recommended number of ABC licenses of 6 off-sale and 3 on-

sale, while the number of existing licenses is 2 off-sale and 2 on-sale. Census tract 5032.04, which is located on the other side of Capitol Expressway, across Seven Trees Boulevard from the project site, has an equally small number of existing licenses as compared to the recommended number of licenses (10 on-sale and 5 off-sale recommended, compared to 3 on-sale and 3 off-sale current licenses). This analysis indicates that the area surrounding the project site (the project census tract and the two adjacent tracts) has a relatively low concentration of liquor licenses as compared to the rest of the City.

Staff also looked at the relative crime rates for the police beat within which the project site is located (X2) and an adjacent beat (L5) (see attached Police Beat Map). Beat X2 is comprised of two of the census tracts discussed above, the project census tract, 5032.17, and the adjacent tract within which the 7-Eleven is located, 5032.18. The crime index for the project police beat only slightly exceeds the city average, (288 crimes as compared to the average of 285 city-wide). The adjacent police beat exceeds the city average by more than 20%; however, this beat is less indicative of the character of the project area in that it is separated from the project site by a major expressway.

The Police Department's Special Investigations/Vice Unit conducted an in-depth crime analysis of the address and activity within 1,000 feet of the address to determine whether off-sale of alcohol at the site might pose a detriment to the neighborhood or continue current law enforcement problems (see memorandum dated May 6, 2003). The Police Department came to "the opinion that the alcohol related use would pose minimal impact to the immediate neighborhood or current law enforcement problems." Most calls for service were either far from the site or about non-alcohol traffic-related incidents. The site is located just off a busy intersection along a major traffic corridor. Such intersections typically generate many traffic-related calls for service. Alcohol-related calls for service were less than one percent of total calls.

The police analysis indicates that the neighborhood within which the project is located has a lower concentration of off-sale and on-sale liquor licenses than the City as a whole, that the immediate neighborhood does not exhibit an unusually high crime rate and that the impact of the proposed facility on the surrounding neighborhood would be minimal. Based on this analysis, staff concludes that this project will not result in an excess concentration of liquor licenses.

Finding Regarding Proximity to Sensitive Uses

The attached Surrounding Uses Map shows the Mercado Latino and its proximity to sensitive uses. The project site is located within less than 150 feet of residential uses (residential uses are immediately adjacent) and within less than 500 feet of an elementary school and a preschool (Seven Trees Elementary School and Solari Community Center Preschool). No secondary schools, colleges or universities are located within 500 feet of the project site.

The shopping center building within which the proposed off-sale use is located is oriented toward the center of the site away from the adjacent residential uses. The Mercado Latino tenant space is tucked in the far corner of the building up against a sound wall which separates the site from the adjacent library and residential uses. While the Mercado is easily accessible from adjacent residences via the public sidewalk, the front of the market is not visible from the proximate residential uses and the building orientation and sound wall provide substantial separation between the two uses.

The Solari Community Center/Preschool site is located approximately 175 feet from the project site

and the Seven Trees Elementary School site is approximately 450 feet from the site. The actual separation between the Mercado and the Community Center is greater than the “as the crow flies” measurement indicates because the existing sound wall on the northerly boundary of the site prevents direct pedestrian access from the Mercado through to the adjacent library site. As a result, both pedestrians and vehicles must travel approximately 3 blocks to access the Community Center. The Seven Trees Elementary School buildings themselves are significantly set back from El Cajon Drive and are separated from the street by a large school play field (See attached aerial photo). The shopping center within which the Mercado is located is not visible from the school site and the Mercado itself is located at the interior of the shopping center site and oriented away from the school.

Based on this analysis, staff concludes that the proposed use is situated and oriented in such a manner that it would not adversely affect the proximate residential, preschool and school uses.

Limitations of the Operation of the Proposed Use

The Mercado Latino is a small market that stocks fresh produce, meats, dairy products and baked goods as well as packaged foods. Staff has visited the site and toured the store on several occasions. It is clearly not a liquor store and has the appearance of an orderly and well-managed business; nevertheless, it is the type of small off-sale establishment that can be problematic if the facility is not well managed and alcohol sales become its primary focus. In light of these potential concerns, staff has included two additional conditions in the Draft Permit. The first limits the sale of alcohol to 10 percent of the store’s total display/shelf area to ensure that the use does not become a liquor store. The second places a one-year time limit on the Conditional Use Permit. This requires the applicant to renew the Permit if he wishes to continue the use beyond one year, and provides the Commission an opportunity to review the facilities’ track record and to look again at a Police Department evaluation of crime statistics in the context of the renewal process.

Conclusion

Based on the analysis above and the conditions included in the Draft Permit, staff concludes that the proposed use conforms to the requirements of the Zoning Code for the sale of alcohol for off-site consumption and that the use is compatible with the surrounding neighborhood.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The project site is located on the northeast corner of Capitol Expressway and Seven Trees Boulevard.
2. The site has a designation of Neighborhood/ Community Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The project site is located in the CG Commercial General Zoning District.
4. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental

review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.

5. The subject site is generally surrounded by residential and commercial land uses.
6. The project proposes the sale of alcoholic beverages for off-site consumption by a grocery store.
7. The Zoning Ordinance requires a Conditional Use Permit for off-sale alcohol in the CG-Commercial General Zoning District.
8. A Conditional Use Permit may be issued for the off-sale of alcoholic beverages if the Planning Commission makes the findings required by San José Municipal Code Sections 20.08.900 and 20.100.720.
9. A Liquor License Exception Permit is not required.
10. The project consists of the off-sale of alcoholic beverages in an approved retail building.
11. The applicant proposes to sell beer only and to offer beer only in 6-pack and 12-pack formats, as opposed to individual can sales.
12. The market is open between the hours of 8:00 a.m. and 9:00 p.m.
13. The Police Department's Special Investigations/Vice Unit conducted an in-depth crime analysis of the address and activity within a 1,000 feet of the address to determine whether off-sale of alcohol at the site might pose a detriment to the neighborhood or continue current law enforcement problems. The department concluded that the alcohol related use would pose minimal impact to the immediate neighborhood or current law enforcement problems.
14. One business that sells alcohol for off-site consumption is located closer than 500 feet to the Mercado Latino. This business is across the street from the project site at Seven Trees Boulevard and Capitol Expressway.
15. The Police memorandum of March 21, 2003, indicates that the recommended number of licenses for the project census tract (5032.17) is 4 off-sale licenses and 7 on-sale. No ABC licenses have been issued for this census tract. The proposed off-sale license would be the first in this tract. The dividing line between the project census tract and the adjacent census tract to the south (tract 5032.18) is Seven Trees Boulevard, which runs along the southerly boundary of the project site. The existing 7-Eleven across the street from the project site which currently holds an off-sale license, is located within this adjacent census tract, 5032.18. This tract has a recommended number of ABC licenses of 6 off-sale and 3 on-sale, while the current number of licenses is 2 off-sale and 2 on-sale. Census tract 5032.04, which is located on the other side of Capitol Expressway, across Seven Trees Boulevard from the project site, has an equally small number of existing licenses as compared to the recommended licenses (10 on-sale and 5 off-sale recommend as compared to 3 on-sale and 3 off-sale current licenses).
16. Police Beat X2 is comprised of two of the census tracts, the project census tract, 5032.17, and the adjacent tract within which the 7-Eleven is located, 5032.18. The crime index for the project

police beat only slightly exceeds the city average, (288 crimes as compared to the average of 285). The adjacent police beat exceeds the city average by more than 20%; however, this beat is less indicative of the character of the project area because it is separated from the project site by a major expressway.

17. The police analysis for this proposal indicates that the neighborhood within which the project is located has a lower concentration of off-sale and on-sale liquor licenses than the City as a whole, that the immediate neighborhood does not exhibit an unusually high crime rate and that the impact of the proposed facility on the surrounding neighborhood would be minimal.
18. The project site is located within less than 150 feet of residential uses (residential uses are immediately adjacent) and within less than 500 feet of an elementary school and a preschool (Los Aroboles Elementary School and Solari Community Center Preschool). No secondary schools, colleges or universities are located within 500 feet of the project site.
19. The shopping center building within which the proposed off-sale use is located is oriented toward the center of the site away from the adjacent residential uses. The Mercado Latino tenant space is tucked in the far corner of the building up against a sound wall which separates the site from the adjacent library and residential uses. While the Mercado is easily accessible from adjacent residences via the public sidewalk, the front of the market is not visible from the proximate residential uses and the building orientation and sound wall provide substantial separation between the two uses.
20. The Solari Community Center/Preschool site is located approximately 175 feet from the project site and the Seven Trees Elementary School site is approximately 450 feet from the site. The actual separation between the Mercado and the Community Center is greater than the measurement, (as the crow flies) indicates because the existing sound wall on the northerly boundary of the site prevents direct pedestrian access from the Mercado through to the adjacent library site. As a result, both pedestrians and vehicles must travel approximately 3 blocks to access the Community Center. The Seven Trees Elementary School buildings themselves are significantly set back from El Cajon Drive and are separated from the street by a large school play field. The shopping center within which the Mercado is located is not visible from the school site and the Mercado itself is located at the interior of the shopping center site and oriented away from the school.
21. The Police Department has indicated that granting this Conditional Use Permit would not pose a detriment to the immediate neighborhood and would not generate additional law enforcement problems.
22. Conditions have been included in this Permit limiting the sale of alcohol to 10 percent of the store's total display/shelf area to ensure that the use does not become a liquor store and requiring applicant to renew the Permit in order to continue the use beyond one year.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.

3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed location of the off-sale alcohol use would not contribute to an excess concentration of establishments that sell alcoholic beverage.
5. The building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential and/or school use.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this*

permit. Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **No New Construction.** No additional construction or development is approved under this permit.
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
5. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
6. **Off-Sale of Alcoholic Beverages.** This permit allows the sale of alcoholic beverages for off-site consumption only.
7. **Compliance with Other Permits.** The developer shall comply with all terms and conditions of the previously approved Site Development Permit (File No. H97-068).
8. **Conformance with the Requirements of the Department of Alcoholic Beverage Control (ABC).** The applicant shall obtain all necessary ABC Permits and shall operate in full conformance with all applicable requirements of the Department of Alcoholic Beverage Control.
9. **Limitations on Area of Alcohol Sales.** The area of alcohol sales shall not exceed 10 percent of the total shelf space and product display area within the retail store. No alcohol product display or storage shall occur outside of the retail tenant space.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
3. **Time Limit.** This Conditional Use Permit expires and has no further force or effect one year from the date of this Permit. **PLEASE NOTE THAT THIS CONDITIONAL USE PERMIT HAS BEEN GRANTED FOR A PERIOD OF ONE YEAR ONLY. YOU ARE BEING SPECIFICALLY AND SEPARATELY ADVISED OF THIS TIME LIMITATION SO THAT YOU WILL CONSIDER THIS TIME LIMITATION IN YOUR DECISION TO ACCEPT THIS PERMIT OR AS YOU MAKE ANY INVESTMENT DECISION RELATED TO THIS PROPERTY.**
4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.